1902

BAIDA NATH MAJUMDAR v. NIBARAN CHUNDER GHOSE.

of *Chathu Rai* v. *Niranjan Rai* (1) held that the order of another Magistrate striking off a case under s. 145 on the ground that there was no immediate apprehension of a breach of the peace was *ultra vires*, and he restored the former case under section 145 and transferred it to another Magistrate. In the case now before us, there was no proceeding under section 145. The Magistrate expressed the opinion on a police report that there was no ground for such proceeding. The District Magistrate on the same police report expressed a different opinion and, on that police report, he took proceedings under s. 145. We cannot find that the order of the Magistrate declining to take proceedings under s. 145 can operate as any bar to the action of the District Magistrate. The present case, therefore, is a new case under s. 145, whereas in the case of *Chathu Rai* v. *Niranjan Rai* (1) the old case was revived by the order of the District Magistrate. The rule is therefore discharged.

D. S. *Rule discharged.*

Before Mr. Justice Harington and Mr. Justice Gupta.

UMA CHARAN SINGH

1901
November 14.

v.

EMPEROR.*

Warrant of attachment issued by a Civil Court—Attachment—Resistance to execution of—Legality of warrant—Rioting—Legal common object—Penal Code (Act XLV of 1860), ss. 141, 147, and 325—Civil Procedure Code (Act XIV of 1882), Schedule IV, Form No. 136.

Where resistance was made to the execution of a warrant issued by a Civil Court for the attachment of the moveable property of the judgment-debtor, the warrant being general in its terms and not purporting on the face of it to

* Criminal Revision No. 826 of 1901 made against the orders passed by D. Cameron, Esq., Sessions Judge of Hooghly, dated the 26th August 1901.

(1) (1893) I. L. R. 20 Calc. 729.

authorize the seizure of the property of the judgment-debtor, nor giving the peon executing it authority to enter his house, nor containing the name of the judgment-debtor:—

Held, that the warrant was not one which could be lawfully executed against the judgment-debtor, and that resistance to the execution of such warrant did not constitute an offence under s. 147 of the Penal Code.

Held, further, where one of the party resisting the execution had exceeded his rights and inflicted a severe injury on one of the opposite party, that his conviction of an offence under s. 325 of the Penal Code was lawful.

Held, also, that s. 141, clause (2) of the Penal Code does not have the effect of making an assemblage of persons an unlawful assemblage, if the object with which they assembled was a perfectly legal one.

THE petitioners applied to the High Court and obtained a rule calling upon the District Magistrate to show cause why their convictions and sentences should not be set aside upon the grounds (1) that the warrant of attachment was illegal because it did not mention the names of Monmohan Singh Rai's heirs as judgment-debtors against whom or upon whose property the writ was attempted to be executed, and (2) because the said writ did not contain any specification of the property to be attached.

A decree for Rs. 812 was obtained by one Anath Nath Barman in the Munsif's Court at Serampore against Monmohan Singh Rai (since deceased), Atul Chandra Singh Rai, and the appellant, Amulya Charan Singh Rai. On the morning of the 21st May 1901 a peon of the Munsif's Court proceeded to the house of Monmohan Singh Rai at Haripal to attach certain moveable property in execution of the decree. He was accompanied by certain of the decree-holder's men and some coolies. Scarcely, however, had the attaching party begun their work when they were attacked and driven away from the house by a body of men armed with *lathies*, amongst whom were the appellants. Four of the decree-holder's men were severely injured, one of them getting his right forefinger and left arm fractured. The warrant of attachment under which the peon acted bore the number and year both of the original suit and of the execution proceeding in which it was issued, and gave the name of the decree-holder and the amount for the realization of which execution was taken out. It described the judgment-debtors as Amulya Charan Singh Rai

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and others of Haripal. It made no specific mention of the judgment-debtors, Atul Chandra Singh Rai and the sons of the deceased Monmohan Singh Rai, and it did not specify the particular property to be attached. The petitioners were convicted by the Deputy Magistrate of Serampore under ss. 147 and 325 of the Penal Code and sentenced to various terms of imprisonment and fine. They appealed to the Sessions Judge of Hooghly, but their appeal was dismissed on the 26th August 1901.

Mr. P. L. Roy and *Babu Saroda Charan Mitter* for the petitioner.

The Deputy Legal Remembrancer (*Mr. Leith*) for the Crown.

HARINGTON AND GUPTA JJ. In this case a rule has been granted calling upon the District Magistrate to show cause why the conviction and sentence passed on the four petitioners should not be set aside. The petitioners had been convicted of offences under ss. 147 and 325 of the Penal Code. The unlawful assembly of which they are said to have been members was formed for the purpose of resisting the execution of a warrant which had been issued in favour of the decree-holder by a Civil Court. The ground on which the rule was granted was that the warrant was not a legal one, and, therefore, that an assembly for resisting the execution of such a warrant was not an unlawful assembly. The objection to the warrant is that it is general in its terms, and does not on the face of it purport to authorize the seizure of the property of the petitioners nor does it purport to give the peon authority to enter into the house of the petitioners for the purpose of attaching their property. The petitioners' names are not mentioned in the warrant. In our opinion a warrant which does not on the face of it authorize the seizure of the petitioners' goods by the peon is not a warrant which can be lawfully executed against the petitioners, and we are strengthened in that view by the fact that in the schedule to the Civil Procedure Code a form of warrant is given, which form provides for the insertion of the name of the person against whom the warrant is to be executed. That was not complied with in the present case. It is suggested that the peon would be protected

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under clause (2) of section 141 of the Penal Code, and the petitioners would have no right to resist the peon. But all we need say with regard to that clause is that it would not have the effect of making an assemblage of persons an unlawful assemblage, if the object with which they assembled was a perfectly legal one. We think that this warrant was not a legal warrant, and that the petitioners therefore cannot be convicted under section 147. But the petitioners were only entitled to resist the execution of this warrant, and it appears from the judgment of the Lower Court that the fourth petitioner, Rakhal Bagdhi, exceeded the right which he had and inflicted a severe injury with a *lathie* on the decree-holder's *gomastha*. That he had no right to do. In our opinion, therefore, the conviction of Rakhal Bagdhi of an offence under s. 325 was lawful, and that conviction will stand. The rule, therefore, will be made absolute for setting aside the conviction and sentence which was passed on the three petitioners—Uma Charan Singh Rai, Amulya Charan Singh Rai, and Karuna Singh Rai, but it will be discharged in so far as it relates to the setting aside of the sentence passed on Rakhal Bagdhi.

D. S.

APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Brett.

1901

December 5.

JAGANNATH MANJHI

v.

JUMMAN ALI PUTWARI.*

Landlord and Tenant—Bengal Tenancy Act (VIII of 1885) ss. 52, 154—Additional rent for excess land—Back rent—Suit for rent.

There is nothing in the Bengal Tenancy Act to prevent the landlord from claiming back rents for any additional area under s. 52 of that Act, if such additional area was in the use and occupation of the raiyat, provided the period for which the claim is made is within that prescribed by the law of limitation.

THE defendants, Jagannath Manjhi and others, No. 1, 2 and 4, appealed to the High Court.

* Appeal from Original Decree No. 55 of 1898, against the Decree of S. N. Huda, Esq. Officiating District Judge of Noakhali, dated the 28th of January 1898.